

No. 03-21-00053-CV

**In the Court of Appeals for the
Third District of Texas at Austin**

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
4/8/2021 11:10:06 PM
JEFFREY D. KYLE
Clerk

Mary Louise Serafine,
Appellant

v.

Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas; David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas,
Appellees

**From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601**

**APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF**

TO THE HONORABLE THIRD COURT OF APPEALS:

Appellant Mary Louise Serafine wishes to ask the Court to extend the time to file Appellant's Brief by 30 days, *to and including May 21, 2021*.

The last clerk's or reporter's record to be filed was that of the second court reporter, who filed her transcript on April 1, 2021. As this is an accelerated

appeal, Appellant’s Brief currently would be due 20 days later, on April 21, 2021. Appellant respectfully asks for a 30 day extension, to and including May 21, 2021.¹

Reasons for extension of time

First, Appellant has an opening brief due in this Court in Case No. 03-20-294-cv (*Serafine v. Blunt*), on April 21, 2021—exactly the same day on which the opening brief in the instant case is due. Although Appellant has two attorneys on this case, both of us are needed to produce the brief. Both cases have multiple issues, a hefty record, and demand responsible briefing. It is simply impossible to meet both deadlines on the same day.

Second, as the Court is aware from Appellant’s recently-filed request

¹ Although we continue for the time being to use the caption shown above, Appellant maintains the position that on January 1, 2019—when the instant case was in federal court—Justices Triana and Baker in their official capacities were substituted *as defendants in this case*, for their predecessors, Justices Pemberton and Puryear respectively. This occurred automatically by operation of law, notwithstanding that Pemberton and Puryear elected to remain in the case, under Federal Rule of Civil Procedure 25(d), which provides:

An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

that the Supreme Court transfer this case to another court of appeals, Appellant takes the position that the Court and the majority of its justices are disqualified or should recuse. It appears that the Supreme Court has denied Appellant's request for transfer. This means that Appellant's remaining relief lies in the Texas Constitution at Article V, Section 11, and Government Code section 22.217. Both of these provisions require the Governor to act, and to appoint special jurists, if a court or its justices are disqualified. Appellant requested this relief in mid-February this year and supplemented the request in mid-March. No decision has been made at this time. Appellant is fully entitled to seek the relief that the Constitution and the Government Code have promised.

Third, both of the undersigned counsel have other matters in progress.

For these reasons, Appellant requests an extension of time, for Appellant's opening brief, to and including May 21, 2021.

A note on the certificate of conference with opposing counsel.

To confer, we emailed opposing counsel about two business days before filing this motion.² They have not replied. From recent correspondence, we

² The text of the email read:

Counsel:

Please let us know if you oppose a motion for extension of time for Appellant's

understand them to have a new position—that, in effect, if such email is not also sent to their staff as they demand, they will ignore the obligation to confer. We disagree and would ask the Court, if possible, to decide this motion as soon as practicable without waiting the typical 10 days.

Respectfully submitted,

/s/ John W. Vinson

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CERTIFICATE OF SERVICE

My signature below certifies that on the 8th day of April, 2021, I served the foregoing document on the parties listed below through the Court's electronic filing system.

Anthony J. Nelson, Esq., tony.nelson@traviscountytexas.gov

Brief which, under the accelerated deadlines here, is due on April 21st. We will ask for a 30 day extension because, in another case, appellant has an opening brief due on the same day. As you are aware from yesterday's filing addressing the Supreme Court, we are also pursuing whether the Governor will commission one or more persons to decide the appeal, in view of the disqualifications at the Third Court of Appeals. If that issue remains unresolved, it would be an additional reason for extension, to avoid decision by disqualified justices.

If you do oppose the extension, please let us know if you will file an opposition so that we can inform the Court accordingly.

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/s/ Mary Lou Serafine
Mary Louise Serafine
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CERTIFICATE OF CONFERENCE

The attempts to conference are described in the body of the motion above.

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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